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OFFICE OF THE  
EXECUTIVE SECRETARY

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July 22, 2002

**VIA HAND DELIVERY**

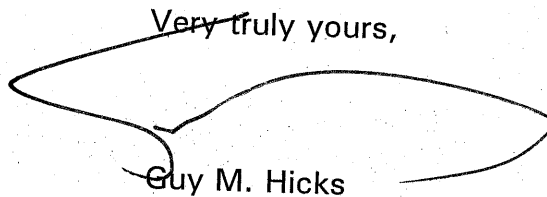
The Honorable Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Docket to Establish Generic Performance Measurements, Benchmarks  
and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*  
Docket No. 01-00193

Dear Chairman Kyle:

Enclosed are the original and fourteen copies of a substitute version of BellSouth's Reply to Response of CLEC Coalition to BellSouth's Second Motion to Reconsider. Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH/jej

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

In Re: *Docket to Establish Generic Performance Measures, Benchmarks, and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*

Docket No. 01-00193

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**REPLY TO RESPONSE OF CLEC COALITION**  
**TO BELLSOUTH'S SECOND MOTION TO RECONSIDER**

BellSouth Telecommunications, Inc. ("BellSouth") files this limited Reply in order to respond to certain arguments raised in the Response of CLEC Coalition to BellSouth's Second Motion to Reconsider. BellSouth relies on its earlier pleading regarding the substantive issues raised in its Motion. However, BellSouth files this limited reply to address the procedural issues discussed in the CLEC motion. The CLECs' procedural discussion analogizing BellSouth's Motion to Reconsider to a motion under Tennessee Rule of Civil Procedure 59.01 is incorrect.

In its response, the CLEC Coalition urges the TRA to reject BellSouth's Motion to Reconsider based on the argument that such a motion is procedurally improper because such motions are not authorized by Tennessee Rule of Civil Procedure 59.01. The CLECs' motion inaccurately characterizes BellSouth's motion and raises an irrelevant argument regarding an inapplicable rule of civil procedure. Both BellSouth's motions to reconsider in this docket, one filed on May 29, 2002 and one filed on June 28, 2002, are filed pursuant to T.C.A. § 4-5-317(a). That section of the Uniform Administrative Procedures Act authorizes a

motion to reconsider to be filed "after entry of an initial or final order." T.C.A. 4-5-317(a). The statute makes no limitation prohibiting a motion for reconsideration of an initial or final order which is rendered upon reconsideration.<sup>1</sup> Likewise, TRA Rule 1220-1-2-.20 imposes no restriction against motions for reconsideration of orders that are rendered in response to a motion to reconsider. The CLECs' contention that BellSouth's motion is not authorized by Tennessee law is clearly wrong. The motion is authorized by T.C.A. § 4-5-317(a) and it is further authorized by TRA Rule 1220-1-2-.20.<sup>2</sup>

Not one of the cases cited by the CLECs addresses a motion to reconsider authorized by statute, such as T.C.A. § 4-5-317(a) applicable in this case. None of the cases addresses a motion to reconsider brought pursuant to an administrative agency's procedural rules, such as TRA Rule 1220-1-2-.20 applicable in this case. Rather, each of these cases addresses motion brought in court pursuant to procedural rules. Accordingly, none of the cases cited are on point, and none of

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<sup>1</sup> The CLECs attempt to characterize BellSouth's motions as "successive." While both motions address Authority orders regarding the adoption of a performance measurements plan, BellSouth's second motion did not simply ask for "successive" reconsideration after a failed motion to reconsider. Rather, reconsideration was granted and BellSouth's second motion sought reconsideration of the new order entered on June 28, 2002. As discussed below, however, even if BellSouth's motions could be considered "successive," there is no ban against such motions brought pursuant to T.C.A. § 4-5-317(a) and TRA Rule 1220-1-2.02(2)(a).

<sup>2</sup> In contrast to the TRA rule, the rules of the Florida Public Service Commission, for example, do contain an express prohibition against motions for reconsideration on orders disposing of a motion for reconsideration. Fla. PSC Rule 25-22.060(a). The lack of any such prohibition under the TRA rule lends further support for BellSouth's position that such motions are proper under Tennessee law and TRA procedure.

the cases provide persuasive authority regarding the treatment of a motion to reconsider authorized by both state statute and agency procedural rules.

Most importantly, the CLECs' contention that "a disappointed party could simply continue filing motions in the hope that he will eventually find an argument that works or a judge who agrees" and that "there would be no end to litigation and no finality for the parties" is flatly wrong under the procedure established for motions to reconsider in both T.C.A. § 4-5-317(a) and TRA Rule 1220-1-2-.20(2)(a). Under both the statute and the rule, if a party files a motion to reconsider and the Authority simply declines to act in any fashion on that motion, then the motion to reconsider is deemed denied. Accordingly, successive motions to reconsider need not pose any undue burden on the Authority in terms of administrative resources in the event that such motions are not well-founded. Moreover, by simply not acting on the motion, the deemed denial of such motion would not result in an order subject to a further motion for reconsideration. The CLECs' argument that there would be no end to litigation if parties were permitted, as the statute provides, to file motions for reconsideration regarding initial and final orders ignores the plain language of both the statute and the rule. Consequently, the CLECs' policy argument regarding endless litigation is unpersuasive.

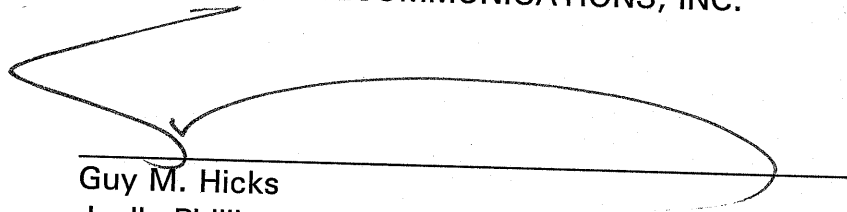
The CLEC Coalition's suggestion that BellSouth is ignoring the rules is simply wrong. Rather, the rule cited by the CLECs does not apply to BellSouth's motion. The rules that apply to the motion are the statute, T.C.A. § 4-5-317(a), and the

TRA Rule, 1220-1-2-.20. Neither the statute nor the TRA rule includes any prohibition against the motion to reconsider filed by BellSouth.

Stated simply, there is no procedural bar to BellSouth's motion to reconsider. As discussed above, the motion is not successive. Moreover, there is no procedural prohibition against even successive motions to reconsider, when such motions are brought pursuant to T.C.A. § 4-5-317(a). The Authority is empowered to take up such a motion, either granting it or denying it, or to ignore such a motion, allowing it to be deemed denied by operation of law.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A large, stylized handwritten signature in dark ink, appearing to be 'Guy M. Hicks', is written over a horizontal line.

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## CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2002, a copy of the foregoing document was served on the following parties, via the method indicated:

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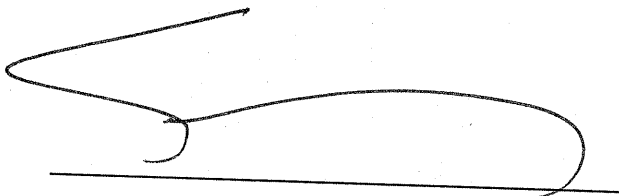
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A handwritten signature in black ink, consisting of a large, stylized 'S' or 'J' shape, followed by a horizontal line.